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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

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CENTURY TELEPHONE ENTERPRISES, INC. AND TDS TELECOMMUNICATIONS CORPORATION-- ANSWERS TO UNIVERSAL SERVICE QUESTIONS

Century Telephone Enterprises, Inc. (Century) and TDS Telecommunications Corporation (TDS Telecom), by their attorneys, submit these responses to the 72 universal service questions released by the Common Carrier Bureau on July 3, 1996 (DA 96-1078).

Summary

The Joint Board may recognize that today's rates are affordable, but must still implement the Act's complete list of universal service principles. These include "reasonably comparable" rural and urban rates and services and nationwide network and service advancements. The rural parity provision is especially pertinent for the average customer in rural high cost areas, while "affordability " is the primary focus of the Lifeline and Linkup programs for low-income consumers. The cost recovery mechanism must be sufficient, all recipients must provide the defined universal services, and costs beyond the loop must be included in the recovery mechanisms.

School, library and rural health care provider mechanisms must satisfy the statutory principles, including reasonable rural-urban parity of rates and services.

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Discounts should be only for eligible entities, with no resale, and only for "universal services." The §254(h) fund should be separate to allow separate evaluation of this new national commitment.

The current USF and DEM Weighting high cost compensation mechanisms should remain in place for rural telephone companies. The cap will have to be removed to ensure "sufficiency" and a broader, TRS cost recovery-type of contribution mechanism should be added. Bulk billing for DEM weighting amounts will help with the mandate for geographic toll rate averaging by alleviating traffic sensitive charge disparities. In addition, zones to reflect cost differences within high cost rural areas should be allowed in order to target high cost recovery better and limit market distortions.

Rural incumbents and any new designated ETCs must use their own costs to calculate high cost recovery that is "specific" and "sufficient." Bifurcation makes sense, but high cost recovery for large LEC areas must not come at the expense of insufficient rural LEC recovery. The record shows that proxies are not accurate in predicting rural LEC costs, so they cannot be mandated for this group of carriers. No transition to a proxy methodology is lawful unless a proxy is proven to correlate closely with rural and urban costs, and not to be overly complex. Real costs of real networks are the ultimate test for sufficient cost recovery and rural parity.

Competitive bidding conflicts with the exclusive state role in ETC and service area designations and cannot be used either to choose one eligible carrier or to force the winner's high costs on others: the law requires specific and sufficient recovery. And

service quality will suffer from low-bidding incentives.

The CCL charge is not a "subsidy." Some adjustments may be appropriate, but even SLCs must meet the rural-urban comparability test. Lifeline and Linkup are not changed by the statute. However, like high cost programs, they may need modifications to replace contributions from access charges and existing "implicit" mechanisms.

1. Is it appropriate to assume that current rates for services included within the definition of universal service are affordable, despite variations among companies and service areas?

The first Common Carrier Bureau (CCB) question singles out the term "affordable" for primary attention as if it were the chief parameter for recognizing or setting rates consistent with Congress's national commitment to universal service. Century and TDS Telecom generally believe that today's rates are affordable. However, too narrow a focus will lead the Joint Board astray.

The question of "affordable" rates under the 1996 Act cannot be answered without reference to both the three-part criterion in which that term appears twice in the universal service section (§ 254) -- "just, reasonable and affordable" (§ 254(i)) -- and the overall list of universal service principles within which it is integrated (§ 254(b)). Giving force to each word within the series and each of the enumerated national principles is essential to implementing the legislation as Congress intends. While the states and the Commission both must "ensure that universal service is available at rates that are just, reasonable, and affordable" (§ 254(i)), the Act provides

separately for service to the low income population by preserving the existing Lifeline Assistance Program without any statutory modification §254(j). The new law also contemplates a separate definition and support through discounts for schools, libraries and rural health care providers (§ 254(h)). Congress also further codified the meaning of affordable rates in mandating interexchange rate averaging in Section 254(g). Thus, current rates have not been blessed by Congress across-the-board as "affordable," although under existing conditions they meet that test.

Reading "affordable" with "just" and "reasonable" and with the principle of "reasonably comparable" rural and urban rates and services enacted in Section 254(b)(3) indicates that the high cost mechanism should seek to allow universal service at rates close to the national average. The Joint Board cannot simply ask whether a particular residence or business is a local service subscriber and equate that to a rate that is "just, reasonable and affordable." Congress now expects subscribers to have access to advanced telecommunications and information services and has decreed that the services that qualify for the universal service definition must "evolve. "

Thus, "affordable" is a term that cannot be reduced to the current reach of subscribership under today's widely varying rates and both explicit and implicit cost recovery. For high cost recovery purposes, it can best be evaluated in terms of an "average" or "typical American" standard. A federal appeals court, considering the universal service program adopted in connection with the shift to an access charge environment, upheld the existing high cost mechanism against claims that such the federal cost recovery program is a tax or unauthorized welfare program. The high cost recovery mechanism is lawful, said the court, largely because

its purpose was to keep rates "within the means of the average subscriber"[1] That test remains a good start for implementing the 1996 Act. The evaluation must include not only the rate to obtain "dial tone," but also the total monthly bill for obtaining access to the communications and information services contemplated by the Act. In sum, "affordable rates" implies levels likely to induce a typical American to subscribe to and make reasonable use of the public switched network.

2 To what extent should non-rate factors, such as subscribership level, telephone expenditures as a percentage of income, cost of living, or local calling area size be considered in determining the affordability and reasonable comparability of rates?

What "non-rate" factors are relevant depends on which of the universal service principles and programs is under consideration. For example, "subscribership level" is of central relevance for Lifeline and Linkup program purposes. The Act expressly refrained from making or requiring changes in these existing programs for achieving universal service among low-income groups (§ 254(j)). Nevertheless, the Commission is free under its universal service authority to convene a joint board to make appropriate adjustments to better achieve the Act's policies and goals with respect to low income members of the public. In that context, subscribership level could be a guide to "affordability," and both cost of living and telephone expenditures as a percentage of income could help calculate what Lifeline and Linkup support would meet the statutory "sufficient" support standard (§ 254(b)(5) and (d)) -- with respect to the nation's poor. However, the current reliance on existing state low-income program eligibility to determine eligibility for these separate programs for low income persons effectively uses the states' greater

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[1]Rural Telephone Coalition v. FCC, 838 F.2d 1307, 1315(D.C. Cir. 1988).

expertise on the neediness of subscribers and minimizes administrative costs. It may be wiser to maintain that approach.

In contrast, the Act's requirement for "reasonably comparable" rates and services in rural areas focuses on a wholly different obstacle to universal service: the higher costs of serving these typically low-density and low-traffic-volume markets. Not only are unit costs higher under these conditions, but infrastructure investment incentives are weaker than in high volume urban markets. The standard chosen by Congress for mechanisms to rectify this potential for "market failure" must be measured by whether rates and services for local, interexchange, advanced telecommunications and information services demonstrate reasonable parity. The federal cost recovery program must be "sufficient" to effectuate this principle. The principle does not permit, much less require, regulatory modification to the different goal that rates be equally "affordable" to rural and urban customers. Thus, even though today's rates are generally "affordable," the comparability principle's plain language says that the rates and services themselves must display reasonable parity -- that is, must not differ unreasonably.

In this high cost context, it is important to look at the size of the service area -- or, more accurately the scope of the service provided for the local rates -- and the relative importance played by long distance service. These factors help in determining whether rates and services meet the reasonable comparability standard. The service area comparison here is not really a "non-rate factor," but an adjustment to make sure that the rate and service comparisons involve similar units, not "apples and oranges." A rate of twenty dollars to reach a million or more customers in an urban calling area, which also includes access to data and routine calling for a flat local rate, is not "reasonably comparable" to a charge of twenty dollars to reach a thousand

or so local customers, often not including the nearest doctor, feed store, post office or information service.

Developing an accurate and lawful benchmark for rates is possible, but not simple. A benchmark for the interstate access component alone would be inadequate, for example. The total monthly telephone bill, the scope of other customers reached for the local charge, the relative reliance on toll calling and many other variables are central to both the customer's determination of what is affordable and the LEC's determination of what investment it will be able to recoup. Thus, it could be complicated to choose national benchmarks based upon rates that the Joint Board could be confident would achieve the Act's universal service principles. So far, the cost and pricing proposals based on variations of incremental costs fail that test. A benchmark based on some nationwide average of the costs for universal service would better determine and distribute universal service high cost compensation that will be "specific, predictable and sufficient,'" ensure rates that are "just, reasonable and affordable" to the average American, ensure against windfalls or confiscation for providers and protect the customer contributions required to support universal service from unnecessary inflation.

3. When making the "affordability" determination required by Section 254 (I) of the Act, what are the advantages and disadvantages of using a specific national benchmark rate for core services in a proxy model?

Using a national benchmark rate could be one way to embody the essential elements of comparability and affordability, albeit less directly than the successful average cost comparisons now used for universal service purposes. However, the question of whether to use a "specific national benchmark rate" for "core services" in a "proxy model" actually involves several questions. The first -- whether to identify and test "affordability" by a national benchmark rate --

again requires the comprehensive look at the Act's standards, including the rural-urban comparability requirement for rates and services, as explained in answering questions 1 and 2. A national benchmark rate that applies to high cost rural areas would need to take into account local and total charges and should embody national average charges for a package of services with the same parameters and scope. The "core" services covered by a national benchmark rate or rates should be the list of federal universal services defined pursuant to §254(c). The Act does not define or authorize a second set of "core" services. The reiterated test in §254(b)(1) and (i) calls for "universal service at just, reasonable and affordable rates."[2]

The complex issues raised by proposals to employ a proxy model or particular proxy schemes will be discussed briefly in answering the "proxy model" questions beginning with Question 34. The Commission has also requested comments on the various models on August 9, 1996. Unless a proxy model can be validated as an accurate predictor of the costs of rural, as well as urban, local exchange carriers, it cannot satisfy the Act's requirement for "specific" and "predictable" federal high cost recovery mechanisms "sufficient" to carry out the section's universal service principles (§254(e)). A formula for determining the "high costs" of a hypothetical network that lacks proven correlation with real costs cannot support a determination that rates will meet the "just, reasonable and affordable" test -- or any part of it.

4 What are the effects on competition if a carrier is denied universal service support because it is technically infeasible for that carrier to provide one or more of the core services?

The potential effects on competition of denying a carrier universal service support

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[2]Throughout the remaining answers, "universal service" will accordingly be used as a substitute for "core services."

because it cannot, for technical reasons, provide the full list of universal services, are relevant, but are not valid reasons to ignore the universal service principles of §254. For example, since the section's purpose includes service availability, nationwide infrastructure advancement and an evolving definition of universal service, there will be times when a designated "eligible telecommunications carrier (ETC) will require a reasonable time to upgrade its network to comply with federally defined universal services. That is consistent with the Act and has no adverse effect on competition.

The Act also demonstrates the clear intent of Congress to give the states authority to designate eligible carriers to receive universal service support and to decide what service area the designation covers (§ 214(e)) The statute imposes clear requirements on the states. It governs the requirements a carrier must satisfy for designation as eligible for support: It must offer and advertise the federally-defined universal services throughout the designated service area (§ 214(e)(1)-(2)). The area wide universal services requirement applies to both new competitors and incumbent LECs. In general, any carrier that undertakes those obligations must be designated. In a rural LEC service area, however, the state must make a public interest finding before designating an additional eligible carrier (§ 214(e)(2)) and the service area must be the rural LEC's study area, unless duly changed by a joint board process (3254 (e)(5)).

The Act takes into account that a new competitor may not be able to build its own facilities to serve the whole area at first. Thus, an eligible carrier may provide some of its service by resale. It can thereby provide the universal services its technology does not support. However, there is no provision for a new carrier to decline to provide some universal service or bypass some part of the service area. This is not surprising, since Congress has even allowed the

state to prevent creamskimmimg in rural markets by requiring that the entrant must serve throughout the service area to compete at all. Congress clearly did not intend to provide high cost compensation for creamskimming.

The Joint Board should recognize that it may be necessary to provide a grace period for compliance so that an eligible carrier may obtain the capability to satisfy the full federal universal service definition. Such latitude should be distinguished from the desire of a carrier to receive universal service support without meeting the statutory requirement for support, even by resale.[3] The bottom line is that there is no impact on competition from requiring providers to meet the same area-wide universal service standards to become eligible for universal service compensation.

5. A number of commenters proposed various services to be included on the list of supported services, including access to directory assistance, emergency assistance, and advanced services. Although the delivery of these services may require a local loop, do loop costs accurately represent the actual costs of providing core services? To the extent that loop costs do not fully represent the costs associated with including a service in the definition of core services, identify and quantify other costs to be considered.

Universal services that will satisfy the principles in §254 and evolve pursuant to §254(c) will involve costs beyond the local loop, including switching costs. A good example is the higher switching cost associated with low volume switching, which is now compensated via DEM weighting. The requirement for sufficient high cost compensation for costs beyond loop costs can be expected to increase when current "implicit" compensation is made explicit, as the

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[3] Even greater conflict with the intent of Congress to limit universal service compensation to actual universal service providers would be evident if an entrant sought compensation as an additional eligible carrier in a rural LEC study area without adhering to the statutory standards for designation.

Act contemplates (§254(d)). For example, The Joint Board should develop an explicit high cost compensation mechanism to reduce the disparity between traffic sensitive access charges in rural and urban areas. The disparity is principally the result of lower rural traffic volumes, which limit available economies of scale and scope. An explicit mechanism would not only facilitate implementation of the Act's rural and urban rate averaging mandate (§254(i)), but also promote the Act's pro-competitive purposes by encouraging toll competition in rural markets.

6. Should the services or functionalities eligible for discounts be specifically limited and identified, or should the discount apply to all available services?

Services and functionalities eligible for §254(h) discounts must be identified specifically to evaluate "sufficiency," ensure "predictability" and calculate compensation. Evolving service eligibility can best be achieved using the special power in §251(h) to define "universal service" for school, rural health care provider and library purposes.

The universal service program for schools, libraries and rural health care providers must meet the §254(b) principles, including the mandate for "reasonably comparable" rural and urban rates and services.

7. Does Section 254(h) contemplate that inside wiring or other internal connections to classrooms may be eligible for universal service support of telecommunications services provided to schools and libraries? If so, what is the estimated cost of the inside wiring and other internal connections?

Inside wiring is deregulated and should not be part of a universal telecommunications service policy.

8. To what extent should the provisions of Sections 706 and

708 be considered by the Joint Board and be relied upon to provide advanced services to schools, libraries and health care providers?

Century and TDS Telecom are not able to predict what role §§706 and 708 will play.

9. How can universal service support for schools, libraries, and health care providers be structured to promote competition?

Section 254(h) already makes support for serving schools, libraries and rural health care providers available to any carrier required to provide the service or discount.

10. Should the resale prohibition in Section 254(h)(3) be construed to prohibit only the resale of services to the public for profit, and should it be construed so as to permit end user cost based fees for services? Would construction in this manner facilitate community networks and/or aggregation of purchasing power?

The Act does not allow resale for profit of discounted §254(h) service for any purpose. Nonprofit sharing by eligible entities for their own use would not violate the anti-resale mandate. If end user fees based on actual discounted cost were lawful, strict enforcement would be essential to prevent sham or mistaken "fee" arrangements.

11. If the answer to the first question in number 10 is "yes," should the discounts be available only for the traffic or network usage attributable to the educational entities that qualify for the Section 254 discounts?

Only traffic and network usage attributable to eligible entities can lawfully qualify for §254(h) discounts.

12. Should discounts be directed to the states in the form of block grants?

Block grants should not be awarded for federally-defined §254(h) services or discounts. The statute makes the federal program responsible for ensuring "sufficient" support and ensuring that the support is used for the intended purposes (§254(d)).

13. Should discounts for schools, libraries, and health care providers take the form of direct billing credits for telecommunications services provided to eligible institutions?

The Act provides for compensation to the provider for the required service or discount §254(b)(c).

14. If the discounts are disbursed as block grants to states or as direct billing credits for schools, libraries, and health care providers, what, if any, measures should be implemented to assure that the funds allocated for discounts are used for their intended purposes?

See the answer to question 12, above.

15. What is the least administratively burdensome requirement that could be used to ensure that requests for supported telecommunications services are bona fide requests within the intent of section 254(h)?

The FCC should define "bona fide requests" for §254(h) purposes and investigate specific complaint filings.

16. What should be the base service prices to which discounts for schools and libraries are applied: (a) total service long-run incremental cost; (b) short-run incremental costs; (c) best commercially-available rate; (d) tariffed rate; (e) rate established through a competitively-bid contract in which schools and libraries participate; (f) lowest of some group of the above; or (g) some other benchmark? How could the best commercially-available rate be ascertained, in light of the fact that many such rates may be established pursuant to confidential contractual arrangements?

The base rates for rural discounts must result in "sufficient" high cost compensation to carry out the §254 requirements, including reasonable rural-urban parity. The measure should be the actual costs incurred by a carrier required to provide the service or discount or, where applicable, the rates that result from high-cost mechanisms that already effectuate the "just, reasonable . . . affordable" and "comparable" standards. Non-regulated LECs should discount a "most favored nation" rate, with adequate disclosure requirements to permit enforcement by the institutions eligible for discounts through the complaint process.

17. How should discounts be applied, if at all, for schools and libraries and rural health care providers that are currently receiving special rates?

Special rates should be continued, subject to full compensation to the provider pursuant to §254(h), unless the eligible institution seeks renegotiation.

18. What states have established discount programs for telecommunications services provided to schools, libraries, and health care providers? Describe the programs, including the measurable outcomes and the associated costs.

Century and TDS Telecom do not have information about state discount programs.

19. Should an additional discount be given to schools and libraries located in rural, insular, high-cost and economically disadvantaged areas? What percentage of telecommunications

Discounts to rural schools, etc., must be "sufficient" to place them in a position to obtain services and access (e.g., Internet) reasonably comparable to what their urban counterparts are able to obtain -- and at reasonably comparable rates.

20. Should the Commission use some existing model to determine the degree to which a school is disadvantaged (e.g., Title I or the national school lunch program)? Which one? What, if any, modifications should the Commission make to that model?

The Commission should not graft a school "need" test onto the Act, which already explicitly excludes schools that exceed $50 million in endowments.

21. Should the Commission use a sliding scale approach (i.e., along a continuum of need) or a step approach (e.g., the Lifeline assistance program or the national school lunch program) to allocate any additional consideration given to schools and libraries located in rural, insular, high-cost, and economically disadvantaged areas?

21. Schools, libraries and health care programs that already have achieved the services and rate levels defined to implement the section should only receive universal service support that, with any continuing support, allows the institute to meet the universal service definitions and discount levels determined pursuant to §254(h) and the principles in §254(6).

22. Should separate funding mechanisms be established for schools and libraries and for rural health care providers?

The funding for §254(h) should be accounted for separately from high cost, low income and TRS compensation programs, which should also be accounted for separately. All interstate universal service programs should be funded from contributions by all providers of interstate services, similar to TRS cost recovery. However, it will be helpful to the evaluation of the new programs compensated under §254(h) to calculate costs separately.

23. Are the cost estimates contained in the McKinsey Report and NII KickStart Initiative an accurate funding estimate for the discount provisions for schools and libraries, assuming that tariffed rates are used as the base prices?

24. Are there other cost estimates available that can serve as the basis for establishing a funding estimate for the discount provisions applicable to schools and libraries and to rural health care providers?

25. Are there any specific cost estimates that address the discount funding estimates for eligible private schools?

23 - 25. Century and TDS Telecom do not have information concerning the costs of funding the § 254(h) programs.

High Cost Fund

General Questions

26. If the existing high-cost support mechanism remains in place (on either a permanent or temporary basis), what modifications, if any, are required to comply with the Telecommunications Act of 1996?

It would be a sound public policy to retain existing high-cost compensation mechanisms for rural LECs. The record is replete with facts and reasons for retaining the current USF and DEM weighting mechanisms. And the Act's requirement for "sufficient" mechanisms precludes the existing--or any other--cap. It would also be necessary to obtain funding from the wider base mandated by §254(d), preferably by a mechanism like the successful TRS cost recovery model. It would also improve DEM weighting, now included in usage-sensitive access charges, to bulk-bill that amount or transfer it to the TRS-type cost recovery mechanism. Bulk billing would facilitate mandatory toll rate averaging by reducing the range of access charge differentials between rural and urban areas.

27. If the high-cost support system is kept in place for rural areas, how should it be modified to target the fund better and consistently with the Telecommunications Act of 1996?

The sound public policy choice to keep current high-cost compensation in place for rural areas could be improved by better targeting high cost compensation within the carrier's service area. Using a formula or validated and voluntary proxy to disaggregate high cost compensation into for example, density-zoned cost recovery, would reflect geographic differences in costs within high cost areas. This cost-based disaggregation would advance the Act's mandate for "specific, predictable and sufficient" federal (and state) high cost recovery (§254(b)(5) and (e)). It would also be consistent with the Act's competition objectives because, together with a broadened, TRS-type contribution system, it would reduce perverse entry incentives to "compete" by entering the lower-cost portions of a high-cost area to maximize high cost compensation and targeting marketing efforts and service to denser or higher volume rural areas or customers.

28. What are the potential advantages and disadvantages of basing the payments to competitive carriers on the book costs of the incumbent local exchange carrier operating in the same service area?

Although competitive carriers and regulators will likely resist requiring cost studies by competitors, CLECs may not lawfully receive high cost compensation for incumbent LECs' book costs. The Act requires "specific" and "sufficient" high cost mechanisms. An ILEC's costs cannot be "specific" to a competing local carrier, except by the extremely unlikely coincidence that the CLEC has entered a rural market where its costs are identical to the incumbent. In reality, a CLEC will enter where its costs are lower and, thus, reap excessive compensation from "symmetrical" high-cost compensation. High cost payments to CLECs that exceed their actual costs will distort market entry incentives and damage the ratepayers that must ultimately fund the

excessive CLEC recovery supported by universal service contributions. Such loading of fictitious costs into customer funded contributions is also contrary to the cost allocation restrictions in §254(k).

29. Should price cap companies be eligible for high-cost support, and if not, how would the exclusion of price cap carriers be consistent with the provisions of section 214(e) of the Communications Act? In the alternative, should high-cost support be structured differently for price cap carriers than for other carriers?

The universal service mechanisms for high cost compensation are intended to benefit customers in high cost areas and encourage nationwide network and service advances. Rural customers in high-cost areas served by price cap LECs are clearly intended to benefit from the national universal service proxy. However, high cost "compensation" will not serve the universal service purposes if a carrier can keep more of those revenues by neglecting rural service and modernization. Recent sales of price cap companies' rural exchanges have evidenced inadequate incentives to serve and upgrade rural networks. Thus, there is ample reason to treat price cap and unregulated LECs differently in designing high cost recovery mechanisms. However, there is no basis for excluding price cap LECs, to the detriment of their rural customers, absent some other effective means of ensuring the rural universal service and rural-urban comparability required by the Act. In addition, high cost compensation for large LEC rural areas must be achieved without impairing the universal service mandate for rate-of-return LECs' rural customers.

30. If price cap companies are not eligible for support or receive high-cost support on a different basis than other carriers, what should be the definition of a "price cap" company?

The Joint Board's universal service plan(s) for price cap companies (or others with partial or different non-cost-based compensation arrangements) must be -- and can only lawfully be -- designed and evaluated to meet the principles and standards of §254 for customers throughout their service territory

31. If a bifurcated plan that would allow the use of book costs (instead of proxy costs) were used for rural companies, how should rural companies be defined?

If the Joint Board adopts a "bifurcated" plan that wisely allows the use of "book" or actual costs for "rural telephone companies," the proper definition of "rural telephone company" should be the statutory definition added by the 1996 Act, 47 U.S.C. §153(r)(47). Congress has already made the determination that it identifies the "operating entities," "study areas" and service characteristics -- based on several alternative statutory density and size measurements -- that need particularized regulatory "rural telephone company" policies. The statutory classification generally correlates closely with those LECs that today remain under rate of return regulation and in the NECA carrier common line pool.[4] The Joint Board should recognize that rate of return and pooling status represent a genuine demarcation between LECs (or groups of LECs). Under the policies rules and conditions that have applied until now, price cap and depooling LECs have staked their companies' and customers' security that they can "make it alone" well enough to pursue these highly-prized regulatory opportunities

[4]See, MTS and WATS Market Structure, et al, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2953 (1987), on recon., 3 FCC Rcd 4543 (1988); Policies and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990), on recon., 6 FCC Rcd 2637 (1991).

the large LECs and AT&T fought to obtain. Although the future may alter the considerations involved, a LEC's current status reflects a significant economic choice that demonstrates a real difference between the two classes of ILECs and can justify differences in high cost compensation mechanisms.

32. If such a bifurcated approach is used, should those carriers initially allowed to use book costs eventually transition to a proxy system or a system of competitive bidding? If these companies are transitioned from book costs, how long should the transition be? What would be the basis for high-cost assistance to competitors under a bifurcated approach, both initially and during a transition period?

If a bifurcated system is adopted (as it should be) because of the different characteristics of rural telephone companies (e.g., low density, high cost, cost variances among rural LECs and "lumpy" investment profiles), it stands to reason that these rural LECS should not "transition" to a proxy system until some proxy system that accounts for these significant rural differences has been devised and validated as a reliable predictor of rural LEC costs.[5] Under a bifurcated approach -- and any other approach adopted for rural LECs -- high cost recovery for competitors must reflect their own high cost. Proxies are no more valid for CLECs than for ILECs in rural markets. Congress was well aware that universal service eligibility had different ramifications for rural areas. That is why it made multiple eligible carriers the general rule in most ILEC areas, but required a public interest finding by the state Commission before an

[5]Rural differences have been the subject of numerous record showings in Joint Board and Commission proceedings, including showings of proxy shortcomings in CC Docket No. 80-286, CC Docket No. 96-45 and CC Docket No. 96-98. Congress recognized the importance of rural differences repeatedly in the Act; §§3(47) (definition), 251(f)(1) and (2), 253, 254 (high cost measures) and 214(e). See, also, §259.

additional carrier could qualify for high cost compensation in a rural LEC's area (§214(e)(2)). In short, it is the nature of rural service areas that dictates different treatment (such as bifurcation). Only changes that remove those differences should terminate the statutory/regulatory rural safeguards made available by Congress or defeat the statutory recognition in §214(e) that CLECs stand in different shoes in rural LECs' areas.

33. If a proxy model is used, should carriers serving areas with subscription below a certain level continue to receive assistance at levels currently produced under the HCF and DEM weighting subsidies?

As explained in the responses to questions 1-3, the 1996 Act is not consistent with a "subscribership" test for high-cost mechanisms. Instead, the Act sets detailed principles for evaluating universal service and, essentially, leaves in place the current low income mechanism to deal with subscribership problems due to household or individual economics. High-cost support appropriately targets the typical subscriber[6] and must promote service evolution and access to advanced telecommunications and information services. The current HCF and DEM weighting mechanisms have a demonstrated record furthering exactly these goals for rural telecommunications. There is no statutory or public policy justification under the Act's universal service commitment to confine mechanisms essential to rural infrastructure and service advances to areas with low subscribership.

Proxy Models

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[6]See note 1, above.

34. What, if any, programs (in addition to those aimed at high-cost areas) are needed to ensure that insular areas have affordable telecommunications service?

Century and TDS Telecom are not aware of any information indicating a need for programs beyond statutorily adequate high cost and low income (i.e., Lifeline and Linkup) mechanisms to keep "insular" telecommunications service "affordable." Actual-cost-based compensation for higher-than-average costs should take care of high cost wherever it occurs, so long as the mechanism meets the Act's "precise, predictable and sufficient" and urban-rural comparability standards If additional low income mechanisms are necessary to counteract below-average subscribership for particular racial, ethnic or other populations, adjustments to the Lifeline program may be in order. However, such concerns are not peculiar to insular areas.[7]

35. US West has stated that an industry task force "could develop a final model process utilizing consensus model assumptions and input data," US West comments at 10. Comment on US West's statement, discussing potential legal issues and practical considerations in light of the requirement under the 1996 Act that the Commission take final action in this proceeding within six months of the Joint's Board's recommended decision.

The future possibility of adopting a "consensus" proxy model cannot justify adoption of a proxy model that cannot be validated as an accurate cost predictor and affirmatively held to serve the purposes of §254 at the time of adoption. Gearing high cost compensation or LEC pricing to levels that do not reflect real costs raises serious issues under Constitutional law and the Act's strong universal service and nationwide advancement mandate. The Joint Board and the Commission should avoid

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[7]Toll rate averaging will have to be made available where it is unavailable now. This could include rural LECs' operating in states or areas where intrastate interexchange carriers have been excused from averaging or serving as the toll carrier of last resort, as well as some insular areas.

unnecessary and wasteful litigation and adopt a plan that will accomplish the commitments Congress has undertaken for the nation's telecommunications.

36. What proposals, if any, have been considered by interested parties to harmonize the differences among the various proxy cost proposals? What results have been achieved?

37. How does a proxy model determine costs for providing only the defined universal service core services?

38. How should a proxy model evolve to account for changes in the definition of core services or in the technical capabilities of various types of facilities?

39. Should a proxy model account for the cost of access to advanced telecommunications and information services, as referenced in section 254(b) of the Act? If so, how should this occur?

40. If a proxy model is used, what, if any, measures are necessary to assure that urban rates and rates in rural, insular, and high-cost areas are reasonably comparable, as required in Section 254(b)(3) of the 1996 Act.

41. How should support be calculated for those areas (e.g., insular areas and Alaska) that are not included under the proxy model?

42. Will support calculated using a proxy model provide sufficient incentive to support infrastructure development and maintain quality service?

43. Should there be recourse for companies whose book costs are substantially above the costs projected for them under a proxy model? If so, under what conditions (for example, at what cost levels above the proxy amount) should carriers be granted a waiver allowing alternative treatment? What standards should be used when considering such requests?

44. How can a proxy model be modified to accommodate technological neutrality?

45. Is it appropriate for a proxy model adopted by the Commission in this proceeding to be subject to proprietary restrictions, or must such a model be a public document?

46. Should a proxy model be adopted if it is based on proprietary data that may not be available for public review?

47. If it is determined that proprietary data should not be employed in the proxy model, are there adequate data publicly available on current book costs to develop a proxy model? If so, identify the source(s) of such data.

48. Should the materiality and potential importance of proprietary information be considered in evaluating the various models?

36 - 48 This series of proxy questions raises issues which basically demonstrate that a workable proxy has not yet emerged from the implementation process. Century and TDS Telecom explained in their comments and reply comments the shortcomings of proxies for rural operating companies like the Century and TDS Telecom LECs. Further quantitative analysis of proxies should become available and could allow parties to comment on how the more recent revisions to the various proposals affect rural LECs. It may be rational to work with actual costs to develop disaggregation formulas or ways to evolve, make comparable and allocate the real costs for universal services. But trying to calculate costs or prices for rural LECs using the proxies that have been proposed would simply widen the gap between theoretical "costs" defined by regulators and the real world costs that rural LECs and their customers must pay. Moreover, imaginary costs are not an effective basis for developing real network and service advances.

One additional "proxy model" question requires a specific response:

43. This question contemplates adopting a mandatory proxy based on an imaginary network and theoretical text book cost methodology, but letting injured LECs with higher real costs prove that the fictional model should be waived for them. Of course, if the proceeding results in an unreliable proxy, relief will have to be available. However, the only rational approach is not to adopt an inaccurate proxy in the first place. Aside from flouting the Act's "specific, predictable and sufficient" standard, the

current record shows that a proxy that cannot be validated as reliable for rural LECs would expose LECs and the Commission to numerous, annual, individualized waiver requests. Even today's burdensome cost studies are far less oppressive than requiring case-by-case administrative litigation for any LEC that needs to recover its own costs for the real network it has built and operates. Developing waiver standards will not cure the regulatory overload or remove those costs of making high cost LECs "sing for their supper" at the FCC or go hungry with an imaginary meal.

Competitive Bidding

49. How would high-cost payments be determined under a system of competitive bidding in areas with no competition?

Under the universal service high cost recovery framework in the Act, competitive bidding for high-cost payments would not be lawful in an area with no competition. The only carrier that could be qualified to receive high-cost compensation would be the incumbent LEC, assuming that the state had designated that ILEC as an "eligible telecommunications carrier" (ETC) (§254(e)). In the event that another ETC had been designated and the ILEC had withdrawn not only as an ETC, pursuant to §214(e)(4), but also had ceased to compete in the area, only the new ETC would be qualified to receive high-cost compensation. Section 254 requires high-cost payments that are "sufficient to achieve the purposes of this section" (S.254(e)). Hence, the measure of the ETC's high cost compensation must be tailored to what is necessary for it to recover its costs for providing service that satisfies the universal service principles and definition. Presumably any rural LEC's bid would be those costs, and any high-cost payment lower than its